

IN THE SENATE OF THE UNITED STATES.

MAY 19, 1860.—Ordered to be printed.

Mr. JOHNSON, of Arkansas, made the following

REPORT.

[To accompany Bill S. 452.]

*The Committee on Public Lands, to whom was referred the case of Sylvester Gray, a free man of color, praying that a patent may issue to him for land settled and improved by him, under the preëmption act of 1841, having had the same under consideration, respectfully report :*

That it appears that the said Gray claims, by preëmption, the northwest quarter of section fourteen, in township forty-eight, of range thirteen, in the Fond-du-Lac land district, Wisconsin, under warrant No. 39,006, issued under act of 1855.

On the 27th January, 1860, the claim of Gray was examined and cancelled by the Interior Department, upon the grounds that he was not a citizen of the United States, being a free man of color, in accordance with the decision of the Supreme Court in the Dred Scott case. (Vide Report of the Commissioner of the General Land Office on the subject.)

Previous, however, to that decision, a different rule of action prevailed, and was recognized by the government as correct, as will be seen by reference to the following opinion of a former Attorney General :

“OFFICE OF THE ATTORNEY GENERAL,  
“March 15, 1843.

“‘SIR: I have the honor to submit herewith a letter from the Commissioner of the General Land Office, and request your opinion on the question therein stated, viz: Whether a free man of color, in the case presented, can be admitted to the privileges of a preëmptioner under the act of 4th September, 1841? I inclose, also, a communication from the register of the land office at Edwardsville, Illinois, containing a statement of facts in the case, together with the usual declaratory statement of the applicants.’

“I have delayed giving an opinion on the subject, because I was desirous of bestowing upon it a very deliberate consideration. The result is, that I am of opinion that a free man of color, a native of this

country, may be admitted to the privileges of a preëmptioner under the tenth section of the act of 4th September, 1841.

“It is not necessary, in my view of the matter, to discuss the question how far a free man of color may be a citizen, in the highest sense of that word—that is, one who enjoys in the fullest manner all the *jura civitatis* under the Constitution of the United States. It is the plain meaning of the act to give the right of preëmption to all denizens; and any foreigner who had filed his declaration of intention to become a citizen is rendered at once capable of holding land.

“I conceive the purpose of the law-giver to be only to exclude *aliens*, in the proper acceptation of the word—men born and living under the *ligeance* of a foreign power—from the enjoyment of the contemplated privileges. This acceptation of the word ‘citizen’ is familiar in questions of a national character, arising during war in the prize courts, and might easily be illustrated by reference to the analogies of the law and the provisions of other statutes. Now, free people of color are not *aliens*; they enjoy universally (while there has been no express statutable provision to the contrary) the rights of denizens. Even in the slaveholding States, they are capable of all the rights of contract and property. In all nations, without exception, ancient and modern, in which domestic slavery has existed, even the *slave* is distinguished from the *alien*. He is a part of the family, and as soon as he passes into the class of freemen, is considered as at once capable of all the *rights* which mere birth under the *ligeance* of a country bestows. How far a political *status* may be acquired is a different question, but his civil *status* is that of a complete denizenship. Therefore, free people of color, having always hitherto been admitted to share in the benefit of the preëmption laws, I see nothing in the law of 1841 requiring a man to be a denizen that necessarily excludes them.

“I have the honor to be, sir, your obedient servant,

“H. S. LEGARE.

“Hon. J. C. SPENCER,

“*Secretary of the Treasury.*”

Your committee have, therefore, reported a bill for the relief of the said Sylvester Gray, and recommend its passage.